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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/094,279	06/09/98	SUN	G 33343-01

HM12/0517  
AMERICAN HOME PRODUCTS CORPORATION  
PATENT LAW DEPARTMENT  
ONE CAMPUS DRIVE  
PARSIPPANY NJ 07054

EXAMINER

LEVY, N

ART UNIT	PAPER NUMBER
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1617

10

DATE MAILED: 05/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/094279

Applicant(s)

JUN et al

Examiner

MEL GUY

Group Art Unit

1615

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/3/00
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 36-98 is/are pending in the application.
- Of the above claim(s) 62, 79, 80, 94 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 36-6, 63-78, 81-93, & 95-98 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Receipt is acknowledged of Request for time and amendment of 2/3/2000 each.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 62,79,80,94 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected species. Election was made **without** traverse in Paper No. 7.

Claims 36-61, 63-78,81-93,95-98 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Only the methacrylate/methacrylic acid polymers are disclosed, with a critical acid/ester ratio in order to constituted pH dependency, as partially solubilized with base to reduce agglomeration prior to drying, with less than 10% free carboxylic acid group converted to salts. The general claim to any polymer without specifying minimum, and maximum 10% solubilization, and ratio of ester/acid is beyond the scope of the specification.

Claims 37-42,88-93, and 95-98 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent for "the base" in part 6 of 88. There is no antecedent for claim 97 less than 10% includes 0 (claim 37).

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Claims 88-93,95 and 96 are rejected under 35 U.S.C. 102(b) as being anticipated by Bohn et al.

The rejection of record is maintained. The instant composition is shown by Bohn-see col 7; partial solubilization is evident (lines 28-30).

Claims 36-61,63-78,81-93,95-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohm et al.

See above-Bohm also provides partially solubilized (col 5, lines 13-29). Endragit polymers, thus, equally functional though by adjustment of ester/acid ratio, rather than by the additional alkalization of the instant invention. These are art-recognized means, not of patentable distinction, to achieve a desired degree of solubilization. The mix of ingredients is also seen as obvious for one of the pesticidal arts to form and use, depending upon the tart species, method of application desired, and duration of effect desired, as optimization parameters well within the artisans control.

Claims 36-61,63-78,81-93,95-98 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fakhruddin EP 0697170.

The rejection of record is maintained.

A pH-dependent polymer, Eudragit S100-The instant inventive polymer-and a base the instant base is mixed in water, pesticide added, and the mixture dried. The ratio of acid/ester, the stilbene, glidant, plasticizers, are all those of the instant invention (p.4). The ratio of polymer/pesticide/UV/stilbene/plasticizer/glidant is of the instant invention (p.3, lines 50-59).

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PH modifiers are used to keep the preparation below pH 5. (Page 5, lines 38-44). These are of the instant invention.

Claims 36-44,46-48,52-54,56,60,61,63-70,84,87-89,92,93,95-98 are rejected under 35 U.S.C. 102(e) as being anticipated by Rheume et al 5560909.

The rejection of record as maintained one adjusts acid/ester ratio as desired.

Claims 36,44-61,63-67,72-75,81-93,95-98 are rejected under 35 U.S.C. 102(b) as being anticipated by Bohm et al WO 89/04170.

Bohm is similar to Bohm-4948586, except that here in this later application the neutralization step is spelled out (page 7, line 30, -line 3 page 8).

The same polymers and adjuvants of the instant invention are used (p.10) will the same particular (p.8,12, Example 1) at the same concentrations.

Claims 36-61,63-78,81-93 and 95-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller or Bohn et al or Fakhruddin in view of Rheume et al and Bohm et al WO89/04170.

The rejection of record is maintained, with Bohm WO showing the method of the instant invention adding base.

Applicant's arguments filed 2/17/00 have been fully considered but they are not persuasive.

Applicants arguments re restriction are accepted but, election of the viral species was examined; references to claims generic to this were found in this process, but no search was

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made of the restricted powders nor of chemical and specified, non-elected biological pesticides.

Claims non elected were withdrawn, if they did not include the viral elected species.

As to the 112 rejections, applicants remarks are accepted as a basis for definition of the questioned terminology. Examiner finds the term coated to imply the insecticide particles to be covered by the polymer matrix-if this is incorrect, the issue will be re-considered. Ambiguity lay in presumption of the product itself having an overlying "coating" this is not evident from review of the preparation examples.

New 112 rejections are made, as it is evident that typographical errors were made-so were spelling errors, and punctuation errors; please review and correct. As to the art rejections, applicant in essence argues differences between the instant invention and the cited art. However, the instant claims are in open language, do not preclude such things as organic solvent addition steps, as in Bohm, for instance, and do not claim any criticality as to the ratio of acid/ester, which is not shown in the prior art (Rheaume, Fakhruddin, for instance) nor the degree of solubilization (now claimed between 0 and 10%). The claims do not provide any patentable distinction over the prior art. The use of specific biological pathogens is not seen to be critical, while the solubilization to reduce agglomeration is a process step again not seen as critical, and thus of no patentable weight. The method of claim 98 is not patentably distinct, as there is no data supporting any unexpected results the prior art discloses that an encapsulated or protected biological pesticide would be expected to have a higher level of activity over time than an unprotected one.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEP. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday from 7:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, acting, can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

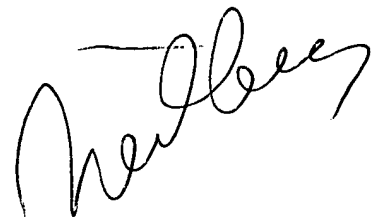
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Levy/sg

May 11, 2000

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is written in a cursive, flowing style with a large initial "N" and "L".

NEIL S. LEVY  
PRIMARY EXAMINER